

**FEB 26 1986**

Mr. Jacob D. Dumelle  
Chairman  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Chicago, Illinois 60601

RECEIVED

APR 20 1988

Air & Radiation Branch  
U.S. EPA Region V

Dear Mr. Dumelle:

This letter concerns the February 6, 1986, third, second notice on R82-1: Rules 203(g)(1) and 202(b). These rules were remanded by the Illinois Appellate Court on September 27, 1978. On July 12, 1979 (44 FR 40723), USEPA issued a Notice of Deficiency in this matter.

My staff and I have completed a preliminary review of this proposed action. The purpose of this letter is to register our very serious concerns with the Board's proposal. The proposal to modify 35 Ill. Adm. Code 212.123(a) regarding the opacity standard cannot be approved by USEPA if it is finally adopted in the form presently contemplated by the Board. We have discussed this proposal with our Headquarters reviewing offices. They agree that USEPA is unable to approve the rule in this form.

Section 51.19(c) of Title 40 of the Code of Federal Regulations clearly requires a State to establish a system for detecting violations of rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints. The Board's proposed modification of Section 212.123(a) would preclude the use of visible emissions as an enforcement tool.

I would also like to take this opportunity to express my concern with the continued delays in the re-adoption of the remanded rules. Nearly seven years have elapsed since USEPA issued a Notice of Deficiency in this matter, yet the Board does not appear to be near adopting replacement rules which are approvable by USEPA.

Region V would have no alternative but to recommend a rulemaking notice proposing to find that the Illinois Part D Particulate SIP no longer meets the requirements of Part D and Section 110 of the Clean Air Act and that the Section 110 (a)(2)(I) major source growth restrictions are re-imposed in all areas not meeting the primary particulate national ambient air quality stan-

dards (NAAQS) unless the Board finally adopts a replacement for the remanded particulate rules which can be approved by USEPA. I wish to remind you that a final finding would ensure that the growth moratorium would remain in effect in these particulate nonattainment areas even after the new source review issue is resolved.

Please make every effort to adopt as expeditiously as possible a replacement for the remanded particulate rules which can be approved by USEPA.

Sincerely yours,

Steve Rothblatt, Chief  
Air and Radiation Branch (5AR-26)

cc: Michael J. Hayes, IEPA

bcc:	D. Kee	J. Paisie	C. Hash
	S. Rothblatt	G. Gulezian	
	E. Cohen, ORC	B. Miller	

5AMD:ARB:RAS:CANO:DISK#9b:kd:2/19/86

REQUEST FOR COMMENTS/TSD ON STATE IMPLEMENTATION PLAN REVISIONS

*FAS*  
*WM*

TO:

           AIR PLANNING SECTION  
           / TECHNICAL ANALYSIS SECTION  
           / REGIONAL COUNSEL  
           STATE SPECIALIST  
           / REGULATORY ANALYSIS SECTION  
           / REGULATORY SPECIALIST  
           WRITER  
           OTHER                                 

           AIR COMPLIANCE BRANCH  
           ENVIRONMENTAL SERVICES DIV.  
           / DIVISION DIRECTOR, AMD  
           / BRANCH CHIEF, ARB  
           STATE COORDINATOR  
           / DOCKET COPY            FILE COPY  
           PIRU, CPDD, ~~OGC~~, SSCD,  
           FOSD, OP&E, ECTD, OFR,  
           STATE

FROM: R. Cano, REGULATORY SPECIALIST:                                 

DATE: 2-25-86, PHONE:                                 

PLEASE REVIEW AND PROVIDE COMMENTS/TSD BY DUE DATE. IF YOU HAVE NO COMMENTS PLEASE CHECK HERE AND RETURN:                                 , DATE:                                 

SUBMITTAL DESCRIPTION

DOCKET NO. AND TITLE: A240 1 Particulate Emissions Rule  
STATE: X ILL,            IND,            MICH,            MINN,            OHIO,            WISC,            OTHER:  
AREA: X STATEWIDE,            AREA SPECIFIC,            SITE SPECIFIC,            OTHER:  
TYPE OF SUBMITTAL: X PART D,            SITE SPECIFIC,            MISC.  
STATE OF DEVELOPMENT: X DRAFT,            FINAL,            OTHER:  
POLLUTANT:            O<sub>3</sub>,            CO, X TSP,            SO<sub>2</sub>,            VOC,            NO<sub>2</sub>,            Pb,            OTHER:  
SUBMITTED BY:                                 , COVER LETTER DATE:                                 , DATE RECEIVED:                                   
RC/ACB/ESD/DUE DATE:                                 

                                 TO PREPARE TSD BY                                  (DATE)

SPECIAL NOTE:

*B7*  
*2-25-86*  
*all*

*NOT A FORMAL SUBMITTEE*

*The Board interprets  
EPA's regs w/o asking  
how convenient when  
we do it. They gripe  
or well whatever  
is mine is mine.*

TRANSMIT A COPY OF YOUR COMMENTS TO: GARY GULEZIAN  
CC: UYLAINE MCMAHAN  
AIR AND RADIATION  
BRANCH  
PHONE: 353-0396

CREATE RAS AND DOCKET FILES                                 

SUBMIT ORIGINAL TO RAS FILES NO. 14240 / DOCKET FILE NO. A240

*S. R. Muller*

ILLINOIS POLLUTION CONTROL BOARD  
February 6, 1986

IN THE MATTER OF: )  
 )  
PARTICULATE EMISSION LIMITATIONS, ) R82-1  
RULE 203(g)(1) AND 202(b) OF )  
CHAPTER 2 )

PROPOSED RULE. THIRD SECOND NOTICE.

ORDER OF THE BOARD (by Jacob D. Dumelle):

This matter comes before the Board upon a January 3, 1986 motion to reconsider filed on behalf of the Illinois Environmental Protection Agency (Agency) and a supplement to the motion filed on January 21, 1986.\* Electric Energy, Inc. (EEI) and Illinois Power Company (IPC) filed a joint response to both motions on January 27, 1986. The Agency requests reconsideration of the Board's December 20, 1985 Second Notice Order. In that Order the Board stated that it would withhold the filing on second notice to allow for comment. The motion to reconsider is hereby granted.

In its January 3 motion the Agency requests the Board to reconsider the proposed language of 35 Ill. Adm. Code 212.123(a) regarding the opacity standard. The Agency requests the Board to delete the following language: "...provided, however, that the exceedance of this standard shall only be a violation for purposes of the establishment of permit conditions concerning monitoring and reporting requirements." Alternatively, the Agency requests the Board to return to first notice for further consideration.

The Agency argues that the amendatory language constitutes a substantive change which requires a return to first notice, that the language is unclear, and that it will probably be unacceptable to the United States Environmental Protection Agency (USEPA) as a revision to the State Implementation Plan (SIP). The Agency elaborates on these basic arguments in its January 21 motion. In response EEI and IPC contend that each of these arguments is either wrong or misdirected, except for the contention that the language is not as clear as it could be.

---

\* On February 5, 1986 the Agency filed a motion to establish a separate docket and to reopen the record and schedule a hearing on the opacity issue. This proceeding has already been much delayed and the Board hereby denies that motion at this time. The language of the opacity section has been again modified in this Order and may well moot the Agency's concerns. If the Agency wishes to propose a new regulatory action regarding opacity at a later date, it may do so.

First, the Board finds that there is no need to return to first notice based on the proposed amendment of Section 212.123(a). The opacity provision has been the subject of hearings and opposing evidence and arguments have been submitted ranging from complete deletion of the provision to the adoption of the rule as originally proposed. The rule now proposed lies well within these extremes, and while the particular language was not the subject of hearings, the issues have been addressed at length. As EEI and IPC properly point out, acceptance of the Agency's view could result in an almost endless circular process.

Second, the Agency points out that pursuant to 40 CFR 51.19(c) the SIP must provide for "detecting violations through the enforcement of appropriate visible emission limitations" and that "the opinion of USEPA staff was that the language of Section 212.123(a) is insufficient to satisfy the requirements of 40 CFR 51.19(c)." (Jan. 21 motion, pp. 1-2). The Board can give but little weight to this "fact" which is based on hearsay and has little foundation. Yet, the Board is required to act consistently with the Clean Air Act and regulations adopted thereunder, and the import of that subsection merits some discussion. That subsection states as follows:

Section 51.19 Source surveillance.

Each plan shall provide for monitoring the status of compliance with any rules and regulations which set forth any portion of the control strategy. Specifically, each plan shall, as a minimum, provide for:

\*\*\*

(c) Establishment of system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints.

The purpose of that section is to insure that the SIP establishes a compliance monitoring system. Subsection (c) requires that purpose to be effectuated in part "through the enforcement of appropriate visible emission limitations." The Board believes that the proposed rule does so. The intent of the rule is precisely to allow the Agency to enforce the opacity standard to the extent that a violation of that standard may be used as a trigger to require testing, monitoring and reporting to determine whether a violation of other standards, most notably the particulate standard, exists. Thus, it also allows for the investigation of citizen complaints. If a citizen believes that the thirty percent opacity standard is being violated, the Agency can easily confirm that and take appropriate action to determine whether that violation is a result of the violation of other rules, regulations or the Environmental Protection Act.

The Board, however, agrees that the proposed language has some unintended consequences. The proposed language was written affirmatively to explain what the Agency can do. Unfortunately, it was not all-inclusive. The Agency correctly points out that there are facilities for which no permit is required which arguably would not be subject to the opacity provision as proposed. While the categories of facilities exempted from the permitting requirement are narrowly drawn and should not be expected to cause significant environmental harm, there appears to be no reason to exempt them from the opacity standard. Further, the limitation of imposing reporting and monitoring requirements as a result of the violation of the opacity standard may be read more narrowly than was intended. The Board simply meant to exclude the possibility of the imposition of cease and desist orders and monetary penalties for the violation of the thirty percent opacity standard. Of course, even these sanctions would be available for opacity violations under the nuisance provision of 35 Ill. Adm. Code 201.141.

The Agency contends that the scope of the proposed amendments to Section 212.123(a) is broader than necessary in that the opacity standard was invalidated only "insofar as it applies to emission sources governed by Rule 203(g)(1)" which is now codified at 35 Ill. Adm. Code 212.201-212.205. [The Celotex Corporation v. The Pollution Control Board, 455 N.E.2d 752 at 760 (1983)]. Since those rules apply only to boilers which burn solid fuel exclusively, the Agency argues that the pre-existing rule remains effective regarding other sources and that the Second Second Notice Proposed Rule cannot alter the pre-existing rule since there is no evidence in the present record regarding sources other than solid fuel sources justifying relaxation of the rule.

Regardless of the validity of the present opacity rule, the Board has earlier found that rule to be supported by the record. While that adoption was later overturned, in whole or in part, by the Supreme Court, the invalidation was premised upon reliance on the technical feasibility finding regarding particulate control which was found to be unsupported by the record. Since the Board now believes that the technical feasibility problem has been remedied, reliance upon it is now justified insofar as non-solid fuel combustion sources are concerned.

For these reasons, the Board will modify its proposed amendment of Section 212.123(a) to preclude the imposition of cease and desist orders or monetary penalties for sources which burn solid fuel exclusively upon a finding of violation of the thirty percent opacity standard rather than allowing the imposition of permit conditions imposing monitoring or reporting requirements.

Finally, in analyzing these comments the Board has noted that the Board note that presently appears at the end of Section

212.121 will have no continuing validity and should be deleted. The Board, therefore, will propose its deletion.

The Board hereby proposes the following amendments for second notice:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS  
FOR STATIONARY SOURCES

PART 201  
PERMITS AND GENERAL PROVISIONS

Section 201.102      Definitions

"Air Contaminant": any solid, liquid or gaseous matter, any odor or any form of energy, that is capable of being released into the atmosphere from an emission source.

"Air Pollution Control Equipment": any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

"Air Pollution": the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

"Ambient Air": that portion of the atmosphere external to buildings comprising emission sources.

"Ambient Air Quality Standard": those standards promulgated from time to time by the Pollution Control Board (Board) pursuant to authority contained in the Act and found at 35 Ill. Adm. Code 243, or by the United States Environmental Protection Agency (USEPA) pursuant to authority contained in 42 U.S.C. 7401 et seq., as amended from time to time.

"Clean Air Act": the Clean Air Act of 1970, as amended, including the Clean Air Act Amendments of 1977, as amended (42 U.S.C. 7401 et seq.)

"Commence": the act of entering into a binding agreement or contractual obligation to, undertake and complete, within a reasonable time, a continuous program of construction or modifications.

"Construction": commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"Existing Air Pollution Control Equipment": any air pollution control equipment, the construction or modification which has commenced prior to April 14, 1972.

"Existing Emission Source": any emission source, the construction or modification of which has commenced prior to April 14, 1972.

"Modification": any physical change in, or change in the method of operations of, an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted. It shall be presumed that an increase in the use of raw materials, the time of operation or the rate of production will change the amount of any specified air contaminant emitted. Notwithstanding any other provisions of this definition, for purposes of permits issued pursuant to Subpart D, the Illinois Environmental Protection Agency (Agency) may specify conditions under which an emission source or air pollution control equipment may be operated without causing a modification as herein defined, and normal cyclical variations, before the date operating permits are required, shall not be considered modifications.

"New Air Pollution Control Equipment": any air pollution control equipment, the construction or modification of which is commenced on or after April 14, 1972.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Owner or Operator": any person who owns, leases, controls or supervises an emission source or air pollution control equipment.

"Person": any individual, corporation, partnership, firm, association, trust estate, public or private institution, group, agency, political subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.

"PSD Increment": the maximum allowable increase over baseline concentration of sulfur dioxide any air contaminant as determined by Section 163 of the Clean Air Act (42 U.S.C. 7473) and regulations adopted thereunder.

"Specified Air Contaminant": any air contaminant as to which this Chapter Subtitle contains emission standards or other specific limitations.

"Standard Industrial Classification Manual": The Standard Industrial Classification Manual (1972), Superintendent of



Documents, U.S. Government Printing Office, Washington, D.C.  
20402.

Section 201.103      Abbreviations and Units

a)    The following abbreviations have been used in this Part:

btu <u>or</u> Btu	British thermal units (60 F)
gal	gallons
hp	horsepower
<u>hr</u>	<u>hour</u>
gal/mo	gallons per month
gal/yr	gallons per year
kPa	kilopascals
kPa absolute	kilopascals absolute
kW	kilowatts
l	liters
mmbtu/hr <u>or</u> M	million btu's per hour
MW	megawatts; one million watts
psi	pounds per square inch
psia	pounds per square inch absolute

b)    The following conversion factors have been used in this Part:

English	Metric
1 gal	3.785 l
1000 gal	3.785 cubic meters
1 hp	0.7452 kW
1 mmbtu/hr	0.293 MW
1 psi	6.897 kPa

PART 211  
DEFINITIONS AND GENERAL PROVISIONS  
SUBPART B: DEFINITIONS

Section 211.121      Other Definitions

All terms defined in 35 Ill. Adm. Code 201 which appear in 35 Ill. Adm. Code ~~212-217~~ 211-217 have the definitions specified by 35 Ill. Adm. Code 201.202. Otherwise the definitions specified in Section 211.122 apply.

PART 212  
VISUAL AND PARTICULATE MATTER EMISSIONS  
SUBPART B: VISUAL EMISSIONS

Section 212.121      Opacity Standards

For the purposes of this Subpart, all visual emission opacity standards and limitations shall be considered equivalent to corresponding Ringelmann Chart readings, as described under the definition of opacity (35 Ill. Adm. Code 211.122).

{Board Note: This subpart as it applies to sources regulated by Subpart E has been ruled invalid by the Illinois Supreme Court, Celotex v. IPCB et al. 68 Ill. Dec. 108, 445 NE2d 752}

Section 212.123 Limitations for All Other Sources

- a) No person shall cause or allow the emission of smoke or other particulate matter from any other emission source other than those sources subject to Section 212.122 into the atmosphere of an opacity greater than 30 percent; provided, however, that a violation of this standard shall not result in the imposition of a cease and desist order or a monetary penalty for sources subject to Sections 212.201, 212.202, 212.203 and 212.204.
- b) Exception: The emission of smoke or other particulate matter from any such emission source may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such more opaque emissions permitted during any 60 minute period shall occur from only one such emission source located within a 305 m (1000 ft) radius from the center point of any other such emission source owned or operated by such person, and provided further that such more opaque emissions permitted from each such emission source shall be limited to 3 times in any 24 hour period.

SUBPART E: PARTICULATE MATTER EMISSIONS  
FROM FUEL COMBUSTION EMISSION SOURCES

Section 212.201 Existing Sources Using Solid Fuel Exclusively  
Located in the Chicago Area

No person shall cause or allow the emission of particulate matter into the atmosphere from any existing fuel combustion source using solid fuel exclusively, located in the Chicago major metropolitan area, to exceed 0.15 kg of particulate matter per MW-hr of actual heat input in any one hour period (0.10 lbs/mmMBtu/hr) except as provided in Section 212.203.

{Board Notes: Sections 212.201 through 212.205 have been ruled invalid by the First District Appellate Court, Commonwealth Edison v. PCB, 25 Ill. App. 3d 271, 323 NE 2d 84 and in Ashland Chemical Corp. v. PCB, 64 Ill. App. 3d 169. Section 212.205 was adopted after the Court challenges and is a valid rule.}

Section 212.202 Existing Sources Using Solid Fuel Exclusively  
Located Outside the Chicago Area

No person shall cause or allow the emission of particulate matter into the atmosphere from any existing fuel combustion source using solid fuel exclusively, which is located outside the

Chicago major metropolitan area, to exceed the limitations specified in the table below and Illustration A in any one hour period except as provided in Section 212.203.

METRIC UNITS

<u>H (Range)</u>	<u>S</u>
<u>Megawatts</u>	<u>Kilograms per megawatt</u>
Less than or equal to 2.93	1.55
Greater than 2.93 but Smaller than 73.2	$3.33 H^{-0.715}$
Greater than or equal to 73.2	0.155

ENGLISH UNITS

<u>H (Range)</u>	<u>S</u>
<u>Million Btu per hour</u>	<u>Pounds per million Btu</u>
Less than or equal to 10	1.0
Greater than 10 but smaller than 250	$5.18 H^{-0.715}$
Greater than or equal to 250	0.1

where:

S = Allowable emission standard in lbs/MBtu/hr or kg/MW of actual heat input, and

H = Actual heat input in million Btu per hour or megawatts

Section 212.203 Existing Controlled Sources Using Solid Fuel Exclusively

Notwithstanding Section 212.201 and 212.202, any existing fuel combustion source using solid fuel exclusively may, in any one hour period, emit up to, but not exceed 0.31 kg/MW-hr (0.20 lbs/~~mm~~MBtu), if as of April 14, 1972, ~~either~~ any one of the following conditions was met:

- The emission source ~~hasd~~ had an hourly emission rate based on original design or equipment performance test conditions, whichever is stricter, which ~~is was~~ was less than 0.31 kg/MW-hr (0.20 lbs/~~mm~~MBtu) of actual heat input, and the emission control of such source is not allowed to degrade more than 0.077 kg/MW-hr (0.05 lbs/~~mm~~MBtu) from such original design or acceptance performance test conditions; or,
- The source ~~is was~~ was in full compliance with the terms and conditions of a variance granted by the Pollution Control

Board (Board) sufficient to achieve an hourly emission rate less than 0.31 kg/MW-hr (0.20 lbs/MMBtu), and construction has commenced on equipment or modifications prescribed under that program; and emission control of such source is not allowed to degrade more than 0.077 kg/MW-hr (0.05 lbs/MMBtu) from original design or equipment performance test conditions, whichever is stricter, or,

c) The emission source had an hourly emission rate based on original design or equipment performance test conditions, whichever is stricter, which was less than 0.31 kg/MW-hr (0.20 lbs/MMBtu) of actual heat input, and the emission control of such source is not allowed to degrade more than 0.077 kg/MW-hr (0.05 lbs/MMBtu) from that rate demonstrated by the most recent stack test, submitted to and accepted by the Agency prior to April 1, 1985, provided that:

- 1) Owners and operators of sources subject to this subsection shall apply for a new operating permit within 180 days of the effective date of this section; and
- 2) The application for a new operating permit shall include a demonstration that the proposed emission rate, if greater than the emission rate allowed by subsections (a) or (b) of this section, will not under any foreseeable operating conditions and potential meteorological conditions cause or contribute to a violation of any applicable primary or secondary ambient air quality standard for particulate matter, or violate any applicable prevention of significant deterioration (PSD) increment, or violate 35 Ill. Adm. Code 201.141.

#### Section 212.204      New Sources Using Solid Fuel Exclusively

No person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any new fuel combustion emission source using solid fuel exclusively to exceed 0.15 kg of particulate matter per MW-hr of actual heat input (0.1 lbs/MMBtu) in any one hour period.

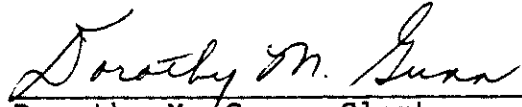
#### Section 212.205      Village of Winnetka Generating Station

Notwithstanding any other requirements of this Part, if the Village of Winnetka files a petition to establish site-specific particulate standards for its generating station within 60 days of the effective date of the rules adopted under docket R82-1, the Village of Winnetka's generating station shall not emit particulates at a level more than 0.25 lbs/MMBtu until January 1, 1988, or until a final determination is made on that site-specific rulemaking, whichever occurs sooner.

IT IS SO ORDERED.

Board Member B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 6<sup>th</sup> day of February, 1986 by a vote of 6-1.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board